HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Cr.C. No. 693 of 2006

APPLICANTS Saba Jubeda Marchent and another

Vs.

RESPONDENTS The State of Chhattisgarh and others

Criminal M.P. No. 306 of 2007

APPLICANTS Sidharth Verma and others

Vs.

RESPONDENT The State of Chhattisgarh

Orders post for 7th-9-2007

Sd/-
Dhirendra Mishra
Judge

(90)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Cr.C. No. 693 of 2006

APPLICANTS

1. Saba Jubeda Marchent, D/o Noor Mohammad Marchent, aged about 31 years, R/o C/o. Sultana Side Sadan, Building No. 16, Flat No. 6, Ground Floor of Beharambag, Jageshwari West, Mumbai 59, Maharashtra
2. Usha Hegde, D/o Madhukar Hegde, aged 24 years, resident of Nilgiri Plant, 8 Ground Floor B- Wing, First Cross Lane, Lokhandwala Andheri West, Mumbai (Maharashtra)

Vs.

RESPONDENTS

1. The State of Chhattisgarh, through S.H.O. Police Station Chhawani, Durg, District Durg (CG)
2. Sidharth Verma, S/o Ashok Kumar Verma, aged 24 years, resident of Malviya Nagar, Durg, P.S. Mohan Nagar (C.G.)
3. Rakesh Sahu, S/o Jageshwar Sahu, aged about 28 years, resident of Chikhli, Thana Punjgaon, District Durg (C.G.)
4. Sunil Soni, S/o Shri Krishn Soni, aged about 28 years, resident of Sujipar Nagar, Durg, Thana Mohan Nagar (C.G.)
5. Monika Kristino, D/o Anthony Kristino aged about 22 years, resident of 11671 Manik Prabhu, Kripa Society, 4 Banglo Madal Andheri, West, Mumbai (MR)

PRESENT: Shri Awadh Tripathi, Advocate for the applicants.
Shri G.K. Beriwal, Addl. Public Prosecutor, for the State.
Shri Adil Minhaj, Adv. for respondent No. 2.

Criminal M.P. No. 306 of 2007

APPLICANTS

1. Sidharth Verma, S/o Ashok Kumar Verma, aged 25 years, resident of Malviya Nagar, Durg, Tehsil and District Durg (C.G.)
2. Sunil Soni, S/o Shri Krishn Soni, aged about 28 years, resident of Deepak Nagar, Durg, District Durg (C.G.)
3. Rakesh Sahu, S/o Jageshwar Sahu, aged about 28 years, resident of village and post Chikhli, Tahsil and District Durg (C.G.)

Vs.

RESPONDENT

The State of Chhattisgarh, through P.S. Chhawni, District Durg (CG)

PRESENT: Shri Adil Minhaj, Advocate for the applicants.
Shri G.K. Beriwal, Dy. Advocate General for the State.

ORDER
(7-9-2007)

M. Cr. C. No. 693/2006 and Cr.M.P. No. 306/2007 are being disposed by this common order as the applicants by these petitions under Section 482 of Cr.P.C. (for short hereinafter referred to as the Code) have prayed for quashing of the charge sheet filed against them in connection with Crime No. 133/2005 registered in P.S. Bhilai for offences punishable under Sections 419, 420 and 511 read with Section 34 of I.P.C.

2. Case of the prosecution, in brief, is that S.H.O. Cantt. S.K. Yadav lodged a report in Police Station Cantt. mentioning therein that an information has been received from Hotel Ashish Power House that some foreigners of Mr. Siddharth Mittal and Group have arrived from U.K. Glasgow and are staying in 5 rooms of his hotel, enquiry be conducted. Whereupon on the basis of the information, police party reached Hotel Ashish and called the foreigners in the counter and asked for their pass port and visa and R.P. whereupon one of them introduced himself as Siddharth Mittal and rest as employees of their group and stated that they came from U.K. Glasgow in connection with a meeting with Jindle company. However they stated that they do not have visa. On interrogation, said Siddharth Mittal told that in fact, his actual name is Siddharth Verma and he is resident of Malviya Nagar, Durg whereas others were Rakesh Sahu, R/o village Chikhli, Sunil Soni, R/o New Deepak Nagar, Durg, Usha Hegde, R/o Nilgiri 8 Ground Floor V Wing, Lokhandwala Andheri West Mumbai, Monia Kristinot, R/o Andheri West, Mumbai, Saba Jubeda merchant, R/o Multanabad, Jageshwari West Mumbai and they admitted that they do not belong to Mittal Group of Industries nor they have any meeting with Jindle. These accused persons stayed in Hotel Ashish by representing themselves as Siddharth Mittal, Chief Executive Officer and rest as employees of Mittal Group and thereby attempted to cheat by personation.

3. Learned counsel for the petitioners submits that the allegations in the F.I.R. as also the statements of the witnesses present in the charge sheet do not disclose commission of any offence under Sections 419, 420 and 511 of I.P.C. The only allegation against the

petitioners is that they stayed in a hotel with assumed names by concealing their real identity, however there is no allegation that they did so with the purpose of cheating the hotel management or any other person. Ashish Gupta, owner of the hotel, S.K. Rao, K. Madhavrao, waiters, Ram Kumar Mishra, Manager, Hemant Kumar, Accountant and Security Guard of the hotel have stated in their statements that the petitioners came there. One of them introduced himself as Siddharth Mittal, deposited Rs. 40,000/- as advance and stayed in 5 rooms. They claimed that they have come from America. They refused to write down their name and address in the hotel register and they promised that balance, if any, shall be paid by them through cheque. Ashish Gupta has also alleged that they stayed in his hotel by concealing their names and addresses and by pretending themselves to be connected with Mittal Group and Company and thereby they stayed there by practicing deceit and they could stay for more days and could have fled from the hotel without making payments.

4. It is argued that to support the charge of false pretence, it must be shown that the accused made a false pretence or representation with intent to defraud the owner of the property and the owner was in fact defrauded. A personation may be innocent or fraudulent. Only those cases in which it is used as a means to cheating, fall within the definition of cheating by personation and essential ingredients of the offence defined under Section 416 of I.P.C. and punishable under Section 419 of I.P.C. are that (a) a person cheats, (b) he does so – (i) by pretending to be some other person, or (ii) by knowing by substituting one person for another or (iii) by representing that he or any other person is person other than he or such other person really is. It is argued that in order to constitute an offence under this section, there must be a fraudulent or dishonest deception practiced by the accused resulting in the delivery of any property causing wrongful gain to the accused and wrongful loss to some other person. From the perusal of the F.I.R. and the statements of the witnesses present in the charge sheet, it is evident that the ingredients of cheating or attempt of cheating is missing in the charge sheet. Reliance is placed in the matters of (i) **The State of Madhya Pradesh –v- Padam Singh** (1973 Cri. L.J. 877) (ii) **Jagat Narayan –v- State**

personation, cheating is an essential ingredient of the offence and unless it is established that the accused cheated someone by personation, the accused cannot be convicted. Hon'ble the Supreme Court in the matter of **Ram Jas** (supra) has held that conviction for offence under Section 419, I.P.C., substantively or with the aid of Section 109, I.P.C., could only have been justified if the facts proved constituted all the ingredients of cheating.

10. In the instant case also, the only allegation present in the charge sheet is that the accused persons stayed in a hotel by false representation, however there is no allegation that the accused persons by representing themselves as Siddharth Mittal and employees of Mittal Group of Companies attempted to cheat and thereby deceived the hotel management in order to induce them to deliver any property and thus the ingredients of cheating as defined under Section 415 of the I.P.C. are missing.

11. In view of the above discussion made in foregoing paragraphs, the petitions are allowed. The charge sheet filed against the petitioners before Chief Judicial Magistrate, Durg in relation to Crime No. 133/2005 for the offences under Sections 419, 420 and 511 read with Section 34 of I.P.C. is quashed.

sd/-
Dhirendra Mishra
Judge